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No. 85-1169

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

TERRE DU LAC, INC., TERRE DU LAC GOLF & COUNTRY CLUB, INC., TERRE DU LAC COUNTRY CLUB ASSOCIATION, a limited partnership, C.I.T. CORPORATION, SENSIBAR ENTERPRISES, INC., MO-ILL, LTD., and JAMES O. KWON,

Petitioners,

vs.

TERRE DU LAC ASSOCIATION, INC.,

Respondent.

SUPPLEMENTAL BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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Respondent, Terre du Lac Association, Inc.* submits this Supplemental Brief in Opposition to the Petition for Writ of Certiorari in order to bring to this Court's attention the recent decision of the U.S. Court of Appeals for the Fifth Circuit in *ArmcoIndustrial Credit Corporation v. SLT Warehouse Company,* No. 84-1828 (5th Cir., February 7, 1986).

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* Terre du Lac Association, Inc. has no parent or subsidiary corporations.

Petitioners in this case have asked the Court to decide whether a plaintiff pursuing a remedy for violations of 18 U.S.C. § 1962 must allege that it relied on defendants' fraudulent representations when such representations are elements of the offenses of mail fraud alleged to constitute a pattern of racketeering activity that is alleged as an element of defendants' violations of 18 U.S.C. § 1962. The Court of Appeals did not directly address this issue in this case, and Petitioners have not cited any case in which the issue was specifically addressed by any court. In *Armco,* however, the Fifth Circuit squarely decided the issue and held that reliance is not an element of a fraud-based RICO claim.

Armco, was an appeal by SLT Warehouse Company ("SLT") from a judgment entered on a jury verdict finding SLT liable to Armco Industrial Credit for violating 18 U.S.C. § 1962(c). SLT asserted, among other things, that the district court erred in refusing to instruct the jury "that Armco could be injured within the meaning of the RICO statute only if it justifiably relied to its detriment on the fraudulent statements comprising the predicate act mail fraud violation." Slip. Op. at 2939. The Fifth Circuit pointed out that SLT's argument confused mail fraud with common law fraud. While Armco was only obliged to prove the occurrence of acts of mail fraud as part of its RICO claim, SLT sought to require that Armco prove the elements of common law fraud. The court held that since reliance is not an element of the crime of mail fraud, the trial judge correctly refused to give the requested instruction. *Id.* at 2939-40.

The Fifth Circuit's succinct analysis of the issue and the absence of other authorities on point demonstrate that the issue is not of such importance that it should be addressed by this Court. Accordingly, the Petition should be denied.

Respectfully submitted,

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